

# EXHIBIT D

ADREA, LLC,	)	
	)	
Plaintiff,	)	
	)	
- against -	)	ECF Case
	)	
BARNES & NOBLE, INC.,	)	13-CV-4137 (JSR)
BARNESANDNOBLE.COM LLC, and	)	
NOOK MEDIA LLC,	)	
	)	
Defendants.	)	
	)	
	)	

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substantial non-infringing use, as I understand would be required for a finding of contributory infringement.

169. Should Adrea or Mr. Berg be permitted to advance a theory of, or provide an opinion with respect to, inducement of infringement or contributory infringement with respect to any asserted claim of the '703 Patent, I reserve the right to supplement my report or to testify at trial to address that opinion.

**L. Non-infringing Design Alternative**

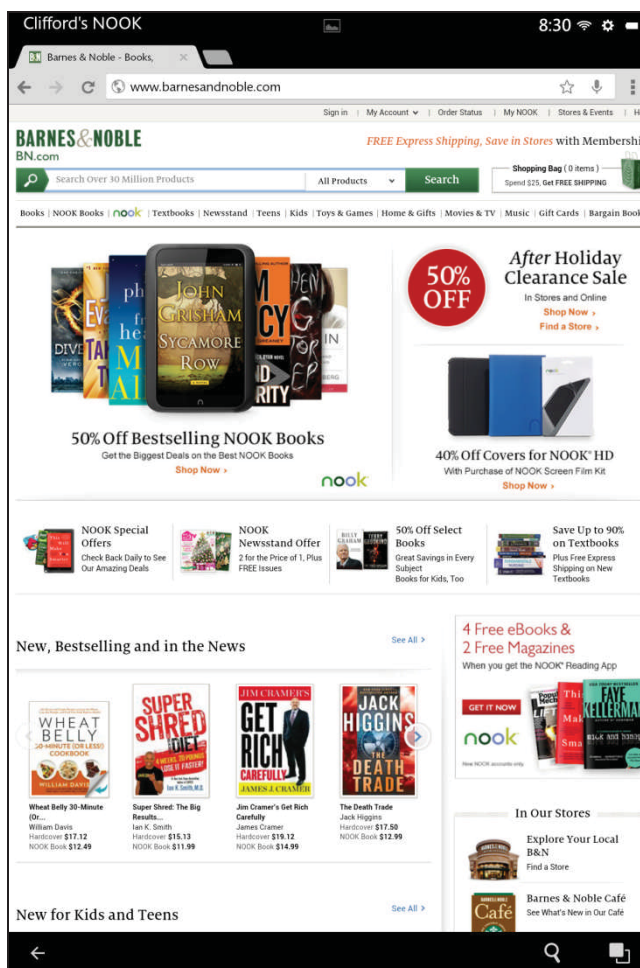
170. To the extent that it might be determined that the Shop application does not comprise a web browser, it would be readily feasible to remove the Shop application as currently implemented from the accused NOOK devices while maintaining the ability to retrieve and review information regarding books and lists of books available from B&N using an application that I expect even Mr. Berg would concede is a web browser.

171. Initially, I performed an experiment to confirm that it is already possible on certain NOOK devices to search for, browse, and purchase books via a web browser on those devices. In this experiment, I used a NOOK HD+ and the Google Chrome web browser on that device to interact with B&N's website at [www.barnesandnoble.com](http://www.barnesandnoble.com) to retrieve information about books offered by B&N and purchase book.

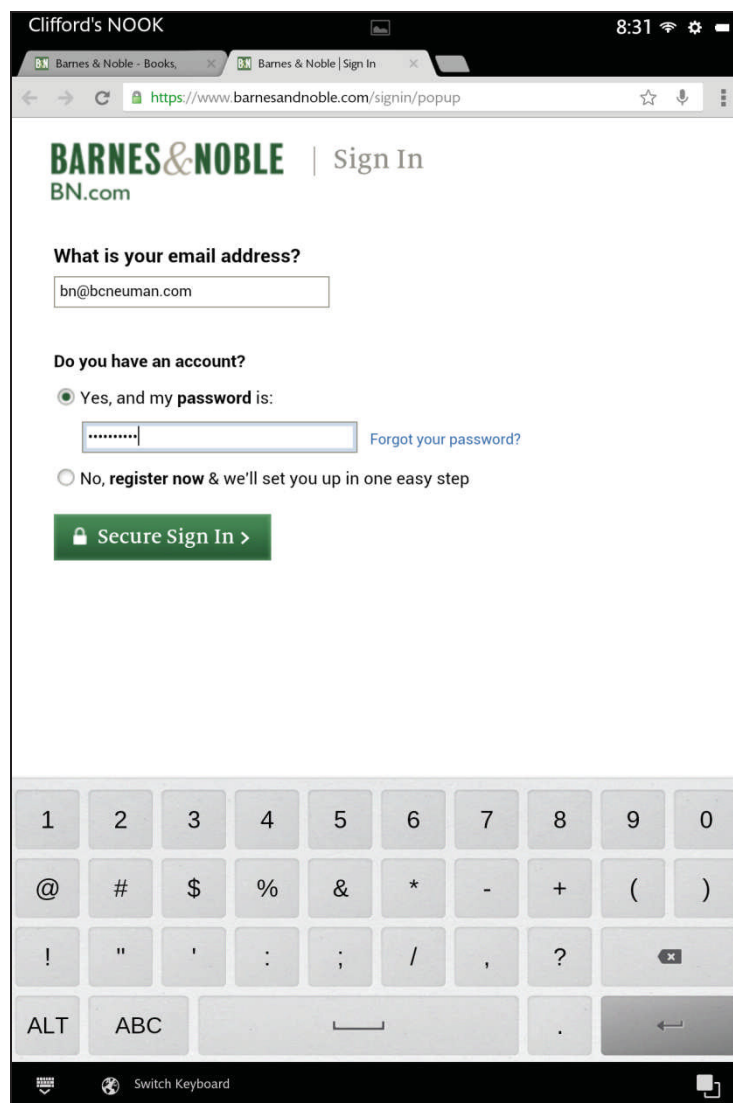
172. I used the web browser on a NOOK HD+ to navigate to [www.barnesandnoble.com](http://www.barnesandnoble.com) and retrieved data including, but not limited to, lists of books that are new, top sellers, or in the news:



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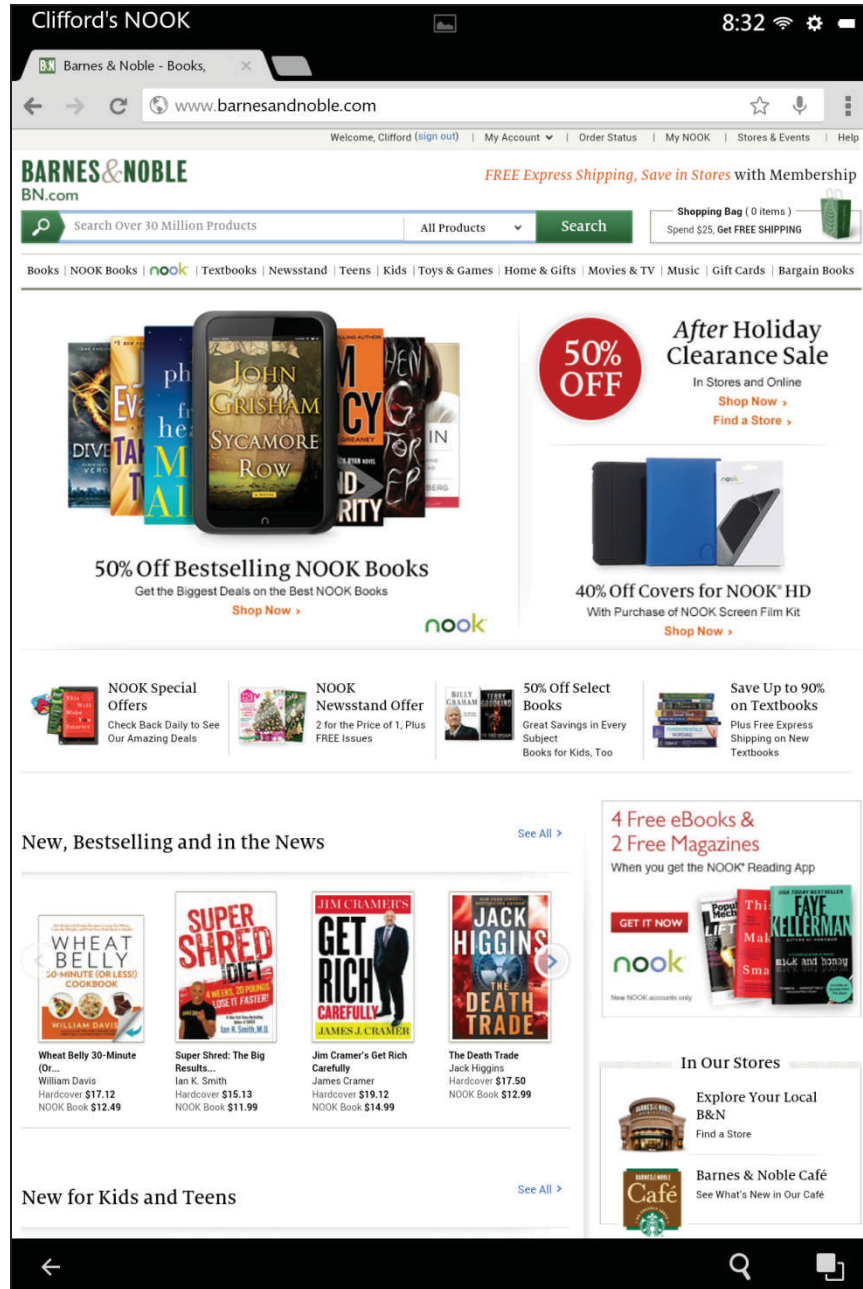


173. I then logged in as “BN@BCNeuman.com” (the same account previously registered to the NOOK device):

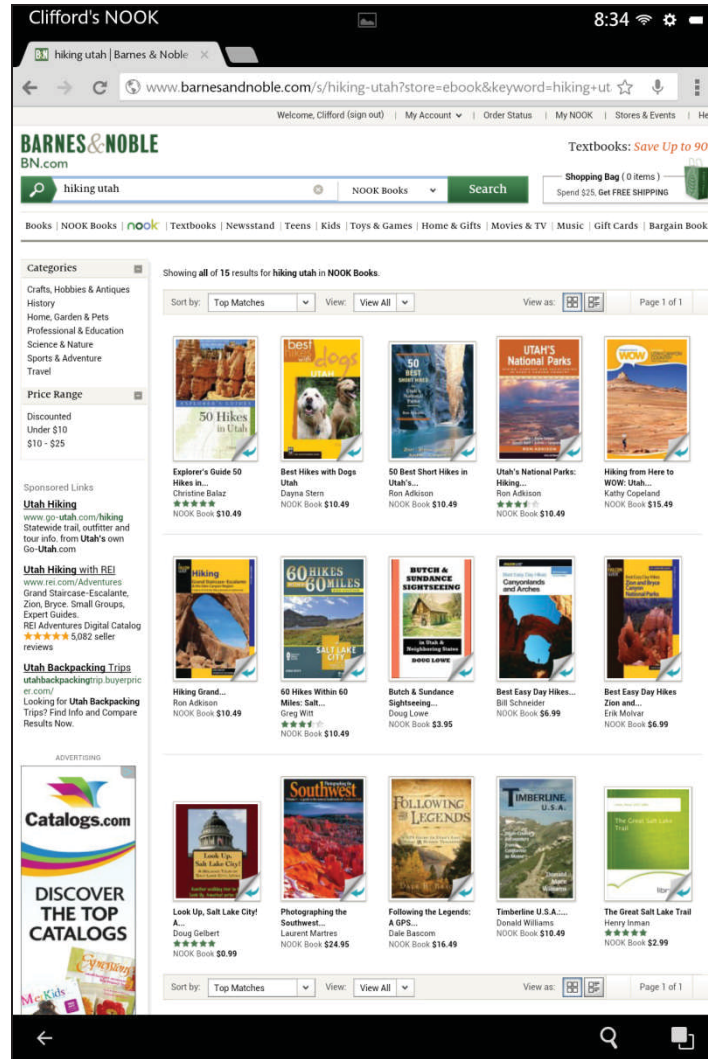


174. After logging in, the Google Chrome web browser continued to display lists of books that are new, top sellers, or in the news while also displaying my first name at the top of the page (indicating that I am logged into my account):

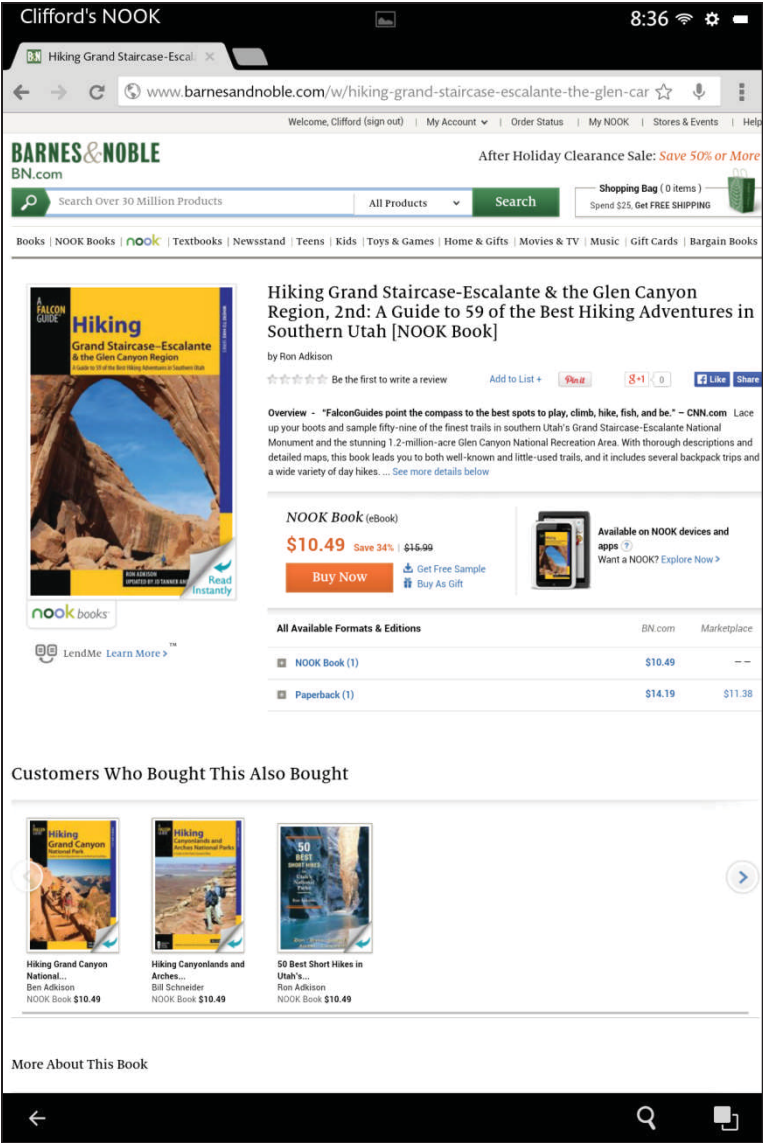
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175. I next began the process of searching for and purchasing a book via the web browser on the NOOK HD+. I searched for an electronic book on B&N's web site by using the keywords "hiking utah":

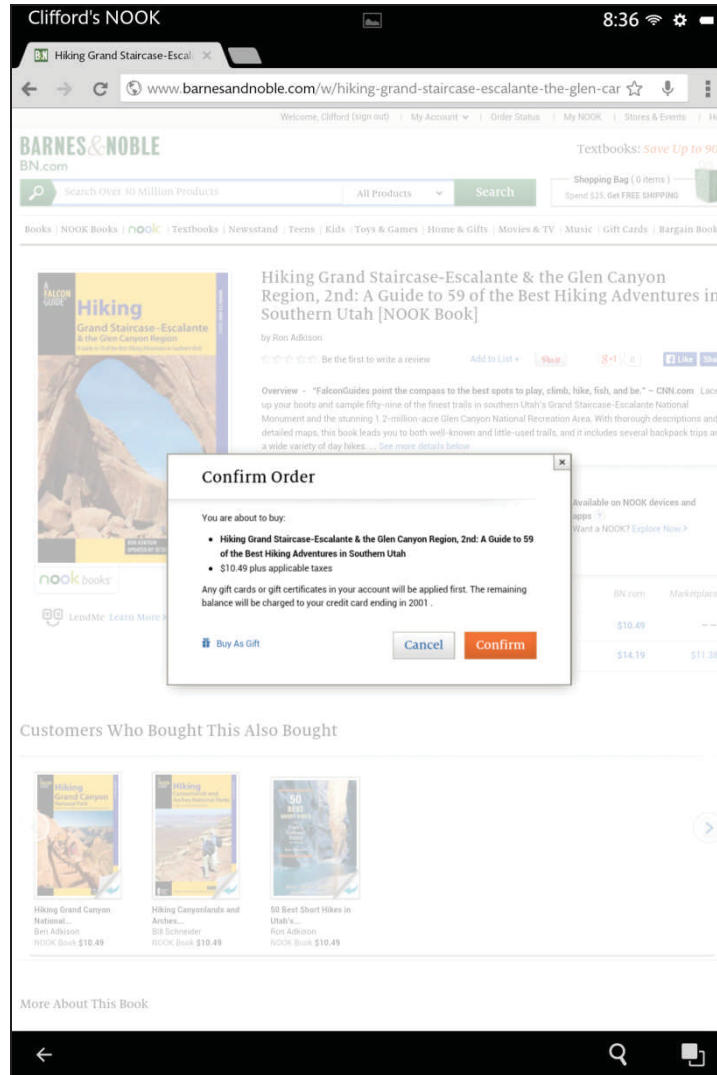


176. Using the web browser on the NOOK HD+, I selected the book: “Hiking Grand Staircase-Escalante and the Glen Canyon Region” by Ron Adkison:



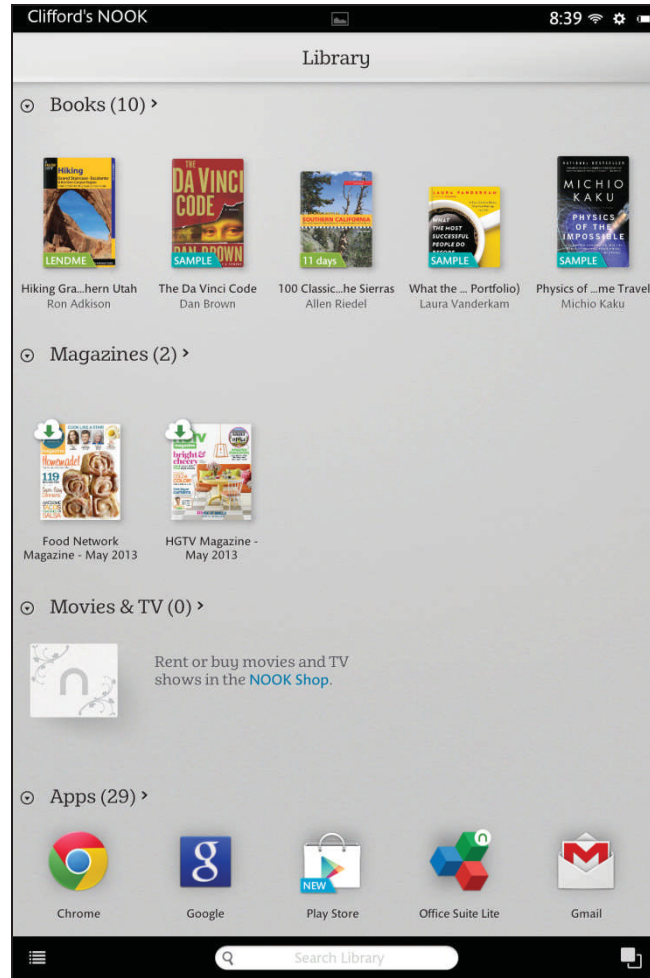
177. I clicked on the “Buy Now” button on the website as displayed on the web browser on NOOK HD+, and was presented with a confirmation screen:

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178. A few minutes later, I pressed the “n” button on the bottom of the NOOK HD+, selected the Library, and I observed that the book had been downloaded and was available for reading on the NOOK HD+:





179. I was able to open the book and view it on the NOOK HD+.

180. I am aware of no reason why these steps could not all be replicated on any NOOK device that already possess an application that I expect even Mr. Berg would accept to be a web browser. Accordingly, in my opinion it would be readily feasible to set the Shop icon to open an instance of Google Chrome or another web browser with [www.barnesandnoble.com](http://www.barnesandnoble.com) (or another web site established by B&N) as the default page.

181. Indeed, I note that, in addition to the Shop application, all accused NOOK devices have a second web browser application (*i.e.*, in addition to the Shop application which in my opinion is also a web browser), even if that second web browser is not made readily accessible to users by default. There is also no truth to Mr. Berg's statement that "the Nook Simple Touch

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and Nook GlowLight[] do not include a web browser.” Berg Rep. at 67. Having reviewed those devices and documents produced during the course of this litigation, in my opinion the NOOK Simple Touch and the NOOK GlowLight (as well as the NOOK Simple Touch with GlowLight) also include a second web browser application. <http://www.geek.com/gadgets/new-nook-touch-has-a-web-browser-1388607/> (NOOK Simple Touch); <http://goodereader.com/blog/e-reader/how-to-access-the-hidden-internet-browser-on-the-nook-simple-touch-with-glowlight> (NOOK Simple Touch with GlowLight); <http://www.ubergizmo.com/2013/11/nook-glowlight-has-a-hidden-browser/> (NOOK GlowLight).

182. I further note that, to the extent an accused NOOK device does not contain an application that Mr. Berg would concede is a web browser, it would be readily feasible to add such an application to the accused NOOK device. Mr. Berg admits that the accused NOOK devices run on an Android operating system. Berg. Rep. at 27–28. There are numerous web browsers that function on mobile devices running an Android operating system, including (as demonstrated above) Google Chrome for Android, as well as other familiar browsers such as Mozilla Firefox and Opera.

## **VII. THE '501 PATENT**

### **A. Overview of the '501 Patent**

183. The '501 Patent is titled “Electronic Book Selection and Delivery System Having Encryption and Security Features.” '501 Patent at Cover Page. The '501 Patent issued on November 20, 2007, from an application filed on September 28, 2001. *Id.* At a high-level, the '501 Patent is directed toward an electronic book selection and delivery system. More specifically, much of this patent is directed at permitting viewers to view electronic books for a predetermined period of time, where that period of time begins when the electronic book is